

APPLICANT:
Kenneth B. Shaw

REQUEST: A variance pursuant to
§ 267-26C(6) of the Harford County Code to
allow two retaining walls with columns to be
located within the county road right-of-way

HEARING DATE: March 2, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5467

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Kenneth B. Shaw

LOCATION: 2006 Hillcroft Drive — High Field Park
Tax Map: 39 / Grid: 1E / Parcel: 426 / Lot: 30
Election District: Third (3rd)

PRESENT ZONING: RR / Rural Residential

REQUEST: A variance pursuant to § 267-26C(6) of the Harford County Code to allow two (2)
retaining walls with columns to be located within the County road right-of-way.

TESTIMONY AND EVIDENCE OF RECORD:

The application indicates the subject property is .46 acres in size, improved by a three bedroom ranch style dwelling with a two bay detached garage.

Kenneth B. Shaw testified that he had filed for the requested variance in order to keep the existing stone columns and retaining wall which he has constructed along the end of his driveway.

Mr. Shaw testified he constructed the columns and retaining wall because of a drainage problem. His property is located at a slightly lower elevation than is Hillcroft Drive. Given the downward slope of Hillcroft Drive as it approaches the subject property, and the relationship of the improvements on the subject property with respect to Hillcroft Drive, Mr. Shaw is as a result subject to a large amount of surface water run-off from both Hillcroft Drive and the properties located along Hillcroft Drive which drain down to him. Mr. Shaw explained that the aerial photograph, with contours, which is labeled as Attachment 8 to the Staff Report, demonstrates his argument.

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The Applicant purchased the property in 2002 and sometime shortly thereafter constructed a detached garage. He also removed the existing paved driveway which he testified had exacerbated water flow toward the front of his house. The driveway was pitched in the wrong direction. He now has re-graded and installed gravel in the driveway to elevate the driveway. Nevertheless, water continues to come down Hillcroft Drive into this driveway and settle along his house. ‘Everything flows down Hillcroft’, according to the Applicant.

The Applicant stated that the stone retaining walls were built by him in order to help intercept the flow of the rainwater and surface water run-off down Hillcroft Drive and onto his property. He believes that the retaining wall has helped. The stone retaining walls along either side of the driveway are each about 14" to 16" in height. The columns at the end of the driveway are 24" x 24" in dimension. Photographs in the file indicate that the columns are about 4' in height.

The Applicant will be continuing to improve the front of his property to help control the surface water drainage onto this property. He will be constructing a concrete driveway in place of the present gravel driveway which he believes will help further elevate the low side of the drive and as a result help keep the water out of his front yard.

The Applicant stated that none of his neighbors had any objection to the columns and retaining walls which he has constructed.

The Applicant admitted that the columns and at least part of the stone retaining walls are located off his property, and are actually in the platted street “right-of-way” area.

For the Harford County Department of Planning and Zoning testified Dennis Sigler.

Mr. Sigler reiterated the findings of the Staff Report that the Department has found no uniqueness of the property. The Applicant did not demonstrate, according to the Staff Report, that the construction of pillars and stone walls are the only solution to preventing drainage from entering onto the subject property. Mr. Sigler further testified that he had recently again visited the subject property, and again could find no reason why the columns would in any way divert the water as claimed by Mr. Shaw.

The Harford County Department of Public Works submitted a memo which indicated that the Department had determined that the retaining wall can remain in the right-of-way if the structure is constructed with a break-away design (hollow center for pillars), and provided the property owner assume all liability if any accidents occurred involving the structures.

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No testimony or evidence was presented in opposition.

APPLICABLE LAW:

The Applicant is requesting a variance to § 267-26C(6) of the Harford County Code which states:

“(6) No accessory use or structure, except fences shall be located within any recorded easement area.”

Furthermore, §267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this as all other similar requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant, as can be seen by the photographs in the file, particularly that photograph marked Applicant’s Exhibit No. 1, constructed without a permit rather large, stone columns with what appear to be decorative walls behind and attached. These columns and walls appear to be of very substantial construction. The columns themselves are apparently located almost on the curb of the paved portion of Hillcroft Drive. They appear to be at least 4' tall, with the decorative stone walls curving out and down perhaps another 8' to 10'. Mr. Shaw indicated that these were built to help prevent surface water run-off from coming onto his property.

It is difficult to see how the stone columns, while they may be aesthetically attractive, in any way help to prevent water from coming onto the Applicant’s property. In fact, just the opposite may be the case. The Applicant was unable in a convincing fashion to explain how the columns and walls behind them in any way divert water. His efforts in building up the elevation of his driveway will no doubt be of more help than what appear to be purely decorative columns and walls.

Furthermore, the Applicant has not been able to indicate how his property is any differently affected than any other property in the neighborhood. He did not indicate that he was the only one so affected, or that for some unusual topographical reason he is more impacted than others. He may in fact suffer from run-off which comes onto his property, but it is very unclear that this is an unusual circumstance in the neighborhood.

However, and far more importantly, the relief requested by the Applicant cannot be given as he does not own the property on which the columns and walls are located. A variance would normally be required to allow any sort of accessory structures within any recorded easement area

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(see § 267-26C(6) of the Harford County Code). However, the columns, and at least a good part of the retaining walls, are not located within an “easement” over which the Applicant has any sort of ownership interest, or which encumbers property which the Applicant owns. They are located directly in what appears to be a platted and no doubt County-dedicated, if not actually deeded, portion of Hillcroft Drive. The Applicant himself admitted that the columns were not on his property. He was asked about the property corner stakes, and indicated those stakes were well behind the location of the columns. Further evidence of this is Attachment No. 2 to the Staff Report which is a location drawing of 2006 Hillcroft Drive. On that location drawing the Applicant has indicated the location of the columns and retaining walls. The columns and at least half of the retaining walls are clearly not on his property at all. It is clear that the Applicant has established no interest whatsoever in Hillcroft Drive, or in the area in which the columns and a substantial portion of the retaining walls are located.

Not owning the property on which the columns and the majority of the retaining walls are located, having no right to use that property (other than the right as a citizen of Harford County to use the public road and public right-of-way), and having no other ownership interest therein the Applicant cannot be given the relief requested. He, in essence, is asking for permission to erect stone columns and walls on County property. Permission for that cannot be given by this forum.

CONCLUSION:

For the above reasons it is recommended that the requested variance be denied.

Date: April 1, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner